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FAX - FILED

DEC 17 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Attorneys for Defendants/Appellants

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 09-0602

JOSEPH T. BERLIN and MARTHA M. BERLIN,

Plaintiffs and Appellees,

-v-

MAGNOLIA ENTERPRISES, LLC, COLBERT P. HOWELL, BARBARA J. HOWELL, NORTHWEST ACCEPTANCE CORP., BARBARA JEAN HOWELL as TRUSTEE of the REVOCABLE INTERVIVOS VIRGINIA-BELL NEILSON TRUST, and DENNIS DeVAR NEILSON,

Defendants and Appellants.

SECOND AMENDED NOTICE OF APPEAL

COME NOW, the Defendants and Appellants, Magnolia Enterprises, LLC, Colbert P. Howell, Barbara J. Howell, Barbara Jean Howell as Trustee of the Revocable Intervivos Virginia-Bell Neilson Trust, and Dennis DeVar Neilson, by and through their respective counsel of record, William K. VanCanagan, of the law firm of Datsopoulos, MacDonald & Lind, P.C., and David H. Bjornson, of the Bjornson Law Offices, P.C., pursuant to this Honorable Court's *Notice Requiring Filing of Amended Notice of Appeal or Cross-Appeal*, and hereby respectfully provide the following:

NOTICE is given that the above-named Appellants who are the Defendants in that cause of action filed in the Fourth Judicial District, in and for the County of Missoula, as Cause No. DV-08-1552, hereby appeals to the Supreme Court of the State of Montana from the final judgment or order entered in such action on the 5th day of October, 2009.

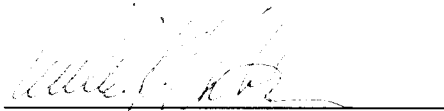
THE APPELLANTS FURTHER CERTIFY:

1. That this matter is subject to the mediation process required by M.R.App.P. 7. The money judgment being sought is not less than \$5,000.
2. That this matter is not an appeal from an order certified as final under M.R.Civ.P. 54(b).
3. That all available transcripts of the proceedings in this cause involving the issues appealed have not been ordered from the court reporter contemporaneously with the filing of this notice of appeal. Appellants have

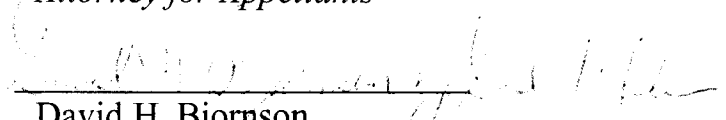
complied with the provisions of M.R.App.P. 8(3) contemporaneously with the filing of this Amended Notice of Appeal.

4. That a copy of the notice of appeal has been contemporaneously filed in the office of the Clerk of the District Court and served by mail on all attorneys of record and on all parties not represented by an attorney.

DATED this ____ day of December, 2009.



William K. VanCanagan
Attorney for Appellants



David H. Bjornson
Attorney for Appellants

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Datsopoulos, MacDonald & Lind, P.C., hereby certify that a true and correct copy of the foregoing was mailed or faxed, postage prepaid, this ____ day of December, 2009, to the following:

Brian J. Smith
Kathryn S. Mahe
Garlington, Lohn & Robinson, PLLP
199 West Pine St.
P.O. Box 7909
Missoula, Montana 59807-7909

Richard Buley
Tipp & Buley
Attorneys at Law
2200 Brooks
P.O. Box 3778
Missoula, Montana 59806-3778

By: _____

William K. VanCanagan, Esq.
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Attorneys for Defendants/Appellants

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Plaintiffs and Appellees,

-v-

MAGNOLIA ENTERPRISES, LLC, COLBERT P. HOWELL, BARBARA J. HOWELL, NORTHWEST ACCEPTANCE CORP., BARBARA JEAN HOWELL as TRUSTEE of the REVOCABLE INTERVIVOS VIRGINIA-BELL NEILSON TRUST, and DENNIS DeVAR NEILSON,

Defendants and Appellants.

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COME NOW, the Defendants and Appellants, Magnolia Enterprises, LLC, Colbert P. Howell, Barbara J. Howell, Barbara Jean Howell as Trustee of the Revocable Intervivos Virginia-Bell Neilson Trust, and Dennis DeVar Neilson, by and through their respective counsel of record, William K. VanCanagan, of the law firm of Datsopoulos, MacDonald & Lind, P.C., and David H. Bjornson, of the Bjornson Law Offices, P.C., pursuant to this Honorable Court's *Notice Requiring Filing of Amended Notice of Appeal or Cross-Appeal*, and hereby respectfully provide the following:

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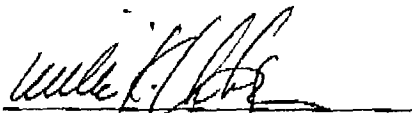
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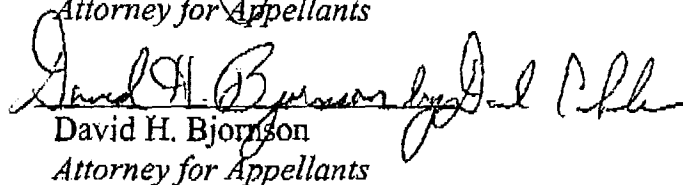
complied with the provisions of M.R.App.P. 8(3) contemporaneously with the filing of this Amended Notice of Appeal.

4. That a copy of the notice of appeal has been contemporaneously filed in the office of the Clerk of the District Court and served by mail on all attorneys of record and on all parties not represented by an attorney.

DATED this 17th day of December, 2009.



William K. VanCanagan
Attorney for Appellants



David H. Bjornson
Attorney for Appellants

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Datsopoulos, MacDonald & Lind, P.C., hereby certify that a true and correct copy of the foregoing was mailed or faxed, postage prepaid, this 1st day of December, 2009, to the following:

Brian J. Smith
Kathryn S. Mahe
Garlington, Lohn & Robinson, PLLP
199 West Pine St.
P.O. Box 7909
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Richard Buley
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By: Mary Fenderson

Datsopoulos, MacDonald & Lind, P.C.

Attorneys at Law

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Dennis E. Lind
William K. VanCanagan
Rebecca L. Summerville
David B. Cotner
William V. Ballew
Darla J. Keck
Terance P. Perry

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Ronald B. MacDonald (1946-2002)

Molly K. Howard
Phil McCreedy
Trent N. Baker
Erika R. Peterman
Del M. Post
Peter F. Lacny
Joslin E. Monahan
Alex Beal

FACSIMILE TRANSMITTALDate: 12/17/09 Time: _____ Fax Number: 444-5705File No.: 19596.001To: Clerk of Montana Sup. Ct.

Firm: _____

From: Nancy Randazzo

Re: _____

We are transmitting 6 pages, including this page. If you do not receive all of the pages, please
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Datsopoulos, MacDonald & Lind, P.C.

Attorneys at Law

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William K. VanCanagan
Rebecca L. Summerville
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Terance P. Perry
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Erika R. Peterman
Del M. Post
Peter F. Lacny
* Matthew A. Baldassin
Joslin E. Monahan
Alex Beal
Joseph R. Casillas

* Also admitted in Washington
* Also admitted in Massachusetts

December 17, 2009

Via U.S. Mail

Mr. Ed Smith
Clerk of the Montana Supreme Court
Room 323, Justice Building
215 North Sanders
P.O. Box 203003
Helena MT 59620-3003

Re: Amended Notice of Appeal
Cause No. DA-09-0602

Dear Mr. Smith:

Enclosed please find the original and one copy of the Second Amended Notice of Appeal previously filed via facsimile. Please file the original, conform the copy and return it to us in the enclosed stamped envelope.

Thank you for your assistance with this matter. Please do not hesitate to contact me with any questions in this regard.

Sincerely,

DATSOPOULOS, MacDONALD & LIND, P.C.



Nancy Randazzo
Paralegal to William K. VanCanagan, Esq.

WKV:nbr
Enc. a/s